

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 9, 2010

PSF No.: 01HD-332

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Amend Prior Board Action of October 8, 2004, Item D-14, Grant of Perpetual, Non-Exclusive Easement to Honomalino-Okoe Community Association for Access and Utility Purposes at Honomalino & Okoe, South Kona, Hawaii, Tax Map Key: 3rd/ 8-9-03: portions of 1 and 83, and 8-9-05: portion of 2.

BACKGROUND:

At its meeting of October 8, 2004, Agenda Item D-14, the Board approved Grant of Perpetual, Non-Exclusive Easement to Honomalino-Okoe Community Association for Access and Utility Purposes at Honomalino and Okoe, South Kona, Hawaii, Tax Map Key: 3rd/ 8-9-03: portions of 1 and 83. **(Exhibit A)**

In the process of preparing the necessary survey describing the subject easement, it was discovered that a portion of the easement which serves as the driveway entrance to the Causey property identified as Tax Map Key: (3) 8-9-05:4, was inadvertently omitted from the submittal description. A portion of the Causey driveway traverses a portion of a School Grant identified as Tax Map Key (3) 8-9-05: 2. **(Exhibit B)**

The School Grant lot, TMK (3) 8-9-05:2 is currently unencumbered, consisting primarily of overgrown kiawe trees and remnant of an old stonewall.

RECOMMENDATION:

That the Board Amend Its Prior Board Action of October 8, 2004, Agenda Item D-14, by:

- A. Inserting references of Tax Map Key (3) 8-9-05: portion of 2 as government land affected in the granting of the proposed easement;

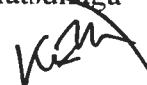
September 9, 2010

- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



Wesley T. Matsunaga
Land Agent



APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



September 9, 2010

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 8, 2004

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 01HD-332

HAWAII

Grant of Perpetual, Non-Exclusive Easement to Honomalino-Okoe Community Association, for Access and Utility Purposes, Honomalino & Okoe, South Kona, Hawaii, Tax Map Key: 3rd/ 8-9-03: portion of 01 & 83.

APPLICANT:

Honomalino-Okoe Community Association, whose mailing address is 74-425 Kealakehe Parkway, Suite 16, Kailua-Kona, HI 96740.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Honomalino and Okoe, South Kona, Hawaii, identified by Tax Map Key: 3rd/ 8-9-03: portion of 1 & 83, as shown on the attached map labeled Exhibit A.

TMK/ ZONING/ ENCUMBRANCE/ EASEMENT AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCE	AREA (Acres)
		State LUC	CZO		
(3) 8-9-003:001	Honomalino	Conserve	Unplan	Vacant	958.14
(3) 8-9-003:083	Okoe	Ag	Unplan	RPS-7360: Kapua Orchard Estates, LLC	500.00

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 8, 2004 *KAT*

ITEM D-14

EXHIBIT A

Pursuant to Act 59, Session Laws of Hawaii 2003, the 22nd Legislature, passed HB No. 1509. The Act, effective July 1, 2003, establishes the South Kona Wilderness Area, which includes unencumbered State lands within the ahupua'a of Honomalino, Okoe, Kapua, Kaulanamauna and Manuka, in the districts of South Kona and Kau.

CHARACTER OF USE:

For access and utility:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

Effective upon date of this Board action.

CONSIDERATION:

Gratis

ANNUAL RENT:

None

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, that states, "Operations, repairs or maintenance of existing structures, facilities equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing", and Class 4, which states, "minor alterations in the condition of land, water, or vegetation".

DCCA VERIFICATION:

Not applicable.

Applicants are private landowners and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

EXHIBIT A

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The subject property was originally encumbered by General Lease No. 1878, awarded to Robinson A. McWayne as the highest bidder at a public auction. This twenty-one year lease consisted of 1,458 acres for pasture purposes, for periods covering 11/16/27 through 11/15/48. A six-month extension was granted, which then expired on 5/15/59.

General Lease No. S-3335, a 21-year lease was awarded to Mr. McWayne as the highest bidder at a public auction for a new lease over the same area, which commenced on 11/12/49 and expired on 11/11/70. By mesne conveyances, General Lease No. S-3335 was under Dillingham Investment Corp., as illustrated below:

Grantor	Grantee	Effective date
Robinson A. McWayne	Robert Hind Ranch	9/22/50
Robert Hind Ranch	Dillingham Ranch, Inc.	8/20/58
Dillingham Ranch, Inc.	Dillingham Investment Corp	5/19/60

Upon expiration of General Lease No. S-3335, Dillingham Investment Corp., inquired and was issued month-to-month Revocable Permit No. S-4868, for retaining the more productive lands of Parcel 1 for continued pasture use. This 500-acre portion of Parcel 1 was then subdivided and designated as Parcel 83 of Tax Map Key: 3rd/ 8-9-03. At the request of Dillingham Investment Corp., Revocable Permit No. S-4869 was cancelled on 12/31/86.

At its meeting of January 22, 1988, Item F-1-b, the Board approved a water permit (RPS-6576) to MacFarms of Hawaii over a portion of Parcel 83, for access and pipeline easements with rights to take water from the Okoe test well for irrigation purposes.

At its meeting of June 13, 2003, agenda Item D-9, the Board approved cancellation of RPS-6576 and issuance of a new water permit (RPS-7360) to Kapua Orchard Estates, LLC., for rights to taking water for irrigation purposes, together with access, utility and water transmission pipeline easements.

Pursuant to Act 59, Session Laws of Hawaii 2003, the 22nd Legislature, passed HB No. 1509. The Act establishes the South Kona Wilderness Area, which includes the unencumbered State lands of Honomalino and Okoe.

By letter dated September 17, 2001, Mr. Gill Terry Causey, on behalf of the Honomalino-Okoe Community Association, requested a perpetual, non-exclusive easement over state-owned lands at Okoe and Honomalino, South Kona, Hawaii, identified as tax map keys: 3rd/ 8-9-03: 1 & 83. Mr. Causey's property, identified as Parcel 4 of TMK: 3rd/ 8-9-05 and other properties in the Honomalino Bay area are currently landlocked. The abutting landowners identified in the table below, have utilized the existing roadway over the years not realizing that an easement was required to establish

EXHIBIT A

their respective legal accesses through State land. The proposed easement alignment which overlays a graveled road that has been in use and existed for at least fifty years, also overlays a portion of the coast trail between Okoe and Milolii. Information regarding the exact date of construction of the subject roadway is not available. The existing gravel/dirt road exits the Mamalahoa Highway, which crosses several private properties before traversing the subject State properties. The Honomalino-Okoe Community Association have permission to utilize the graveled road that traverse the mauka private properties and have created a road maintenance account. It is assumed that previous Lessees of the State, for its ranching operations, may have created the original roadways for ranch service access purposes. There are no immediate plans to improve the existing graveled road, as its current condition is sufficient for continued vehicular accesses. However, should future improvements be required, inquiries will be made to the respective agencies for any special permit requirements.

Current landowners on record requiring an easement are:

Tax Map Keys	Landowner
3 rd / 8-9-05:01	Keana Ka Ilio Trust & Carl D. Carlsmith Trust
3 rd / 8-9-05: 02	State of Hawaii, School Grant 8:6
3 rd / 8-9-05: 03	Shattauer, George A.
3 rd / 8-9-05: 04	Causey, Gill Terry
3 rd / 8-9-05: 05	Kurashige, Christine/ Tipton, Frank B. & Elise K.
3 rd / 8-9-05: 07	Higgins, Mary Helen
3 rd / 8-9-05: 8, 9, 10, 11, 12, 14 & 16	Carlsmith, Robert W./ Marilyn M.
3 rd / 8-9-05: 15 & 17	Carlsmith, Merrill L./ Maxine Trust

The Honomalino-Okoe Community Association and respective individual landowners, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments. To date, all respondents indicated that they had no objections to the request.

AGENCIES	COMMENTS
County of Hawaii:	
Fire Department	No response
Planning	No comments
Public Works	No comments
State of Hawaii:	
DHHL	No response
DLNR-DOFAW	No objections
DLNR-Historic Preservation	No objections, see comments
DLNR-Na Ala Hele Trails	No objections
DLNR-OCCL	No objections, see comments
DLNR-State Parks	No objections

EXHIBIT A

Other Agencies/ Interest Groups:	
MacFarms of Hawaii	No response
Gilbert Kahle-Paapono (Milolii)	No objections, see comments

The Historic Preservation Division had no objections to the granting of an easement, provided that: 1) there be no land altering activity without prior review by Historic Preservation Division; 2) that the easement be contained entirely within the existing roadway edges; and 3) to prevent damage to any unrecorded historic/ archaeological sites outside the easement area, users must not park off the easement until they reach their properties.

Pa'apono, a neighboring community association, has no objections to the request, provided the easement is used strictly for legal access purposes. That those grantees be required to seek additional approvals should their private properties be used for commercial residential purposes.

The Office of Conservation and Coastal Lands has no objections, but reminds that any additional improvements to the land may require a Conservation District Use Permit.

For the moment, the condition of the existing graveled roadway is sufficient for continued vehicular accesses; therefore, there are no immediate plans for road improvements. However, should a need arise, the Honomalino-Okoe Community Association will contact the appropriate governmental agencies having an interest and/or jurisdiction over those lands encumbered under the South Kona Wilderness Area.


RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to the Honomalino-Okoe Community Association, covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3rd/ 8-9-05: 1, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16 & 17, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

EXHIBIT A

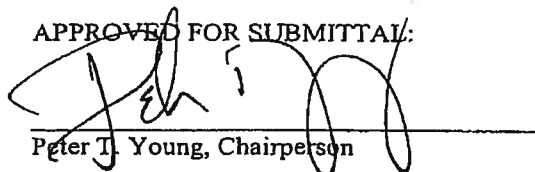
- C. That there be no land altering activity without prior review by Historic Preservation Division, the Office of Conservation and Coastal Lands, and the agency assigned to manage the South Kona Wilderness Area;
 - D. That the easement be contained entirely within the existing roadway edges, prohibiting parking outside the easement area to prevent damage to any unrecorded historical/ archaeological sites;
 - E. The easement shall be used strictly for legal access and utility purposes, that grantees be required to seek additional approvals should their private properties be used for commercial residential purposes;
 - F. Review and approval by the Department of the Attorney General; and
 - G. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Grant an immediate right-of-entry to the Honomalino-Okoe Community Association, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current right-of-entry form as may be amended from time to time;
 - B. This right-of-entry is effective upon Land Board approval and shall continue until the grant of easement document is issued;
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

EXHIBIT A

October 8, 2004 Land Board Meeting:

- Item D- 14. Grant of Perpetual, Non-Exclusive Easement to Honomalino-Okoe Community Association, for Access and Utility Purposes, Honomalino & Okoe, South Kona, Hawaii, TMK: (3) 8-9-03:por. 01 & 83. (HDLO/Wesley)
Approved as amended. The Board amended:
- 1) The Consideration Section to read as follows:
"[~~Gratis~~] One-time payment to be determined by independent appraisal establishing fair market rent, subject to the review and approval by the Chairperson."
 - 2) The Applicant Requirements by adding a paragraph 2) to read as follows:
"2) Pay for an appraisal to determine the one-time payment of fair market value for the easement."

EXHIBIT A

SUBJECT PARCELS

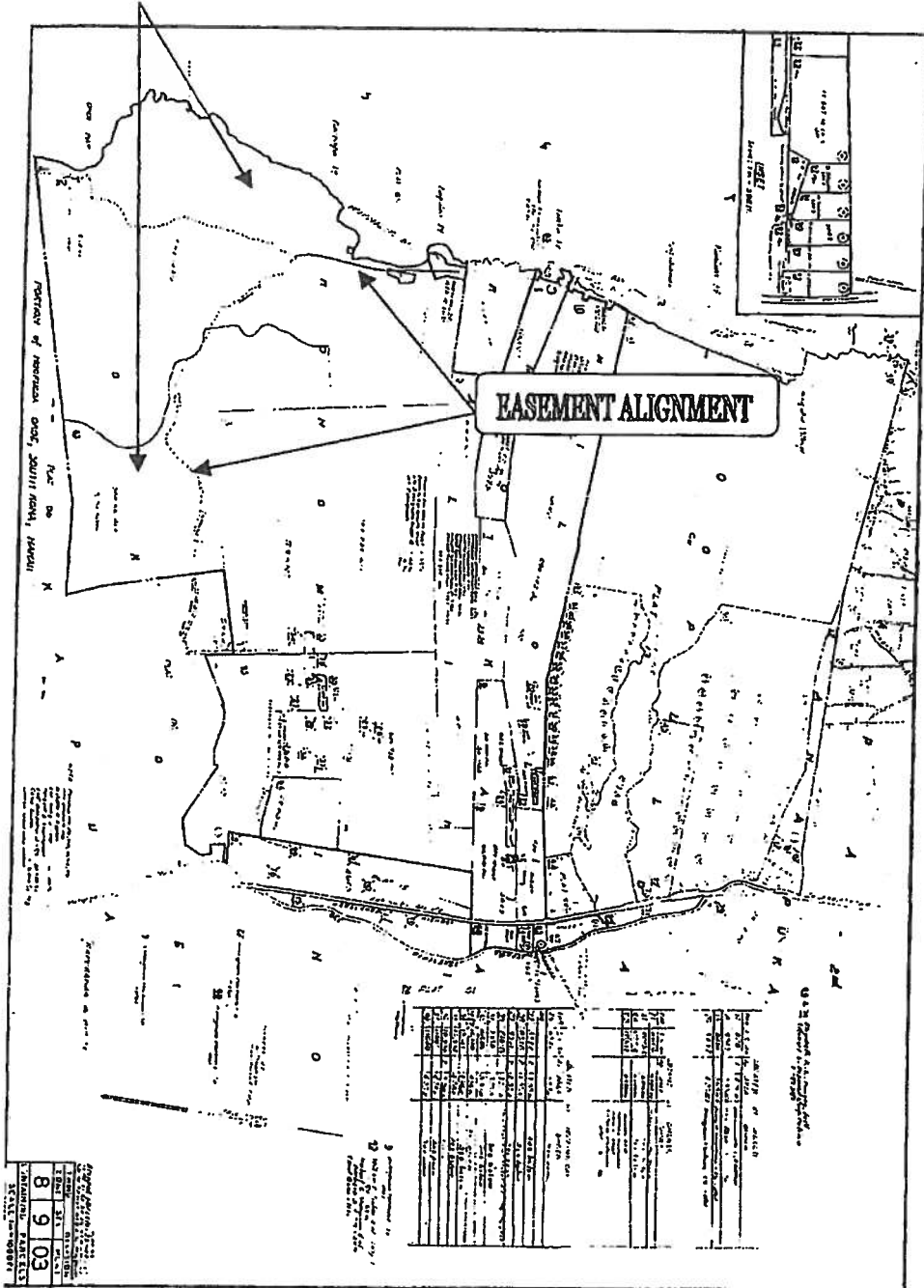


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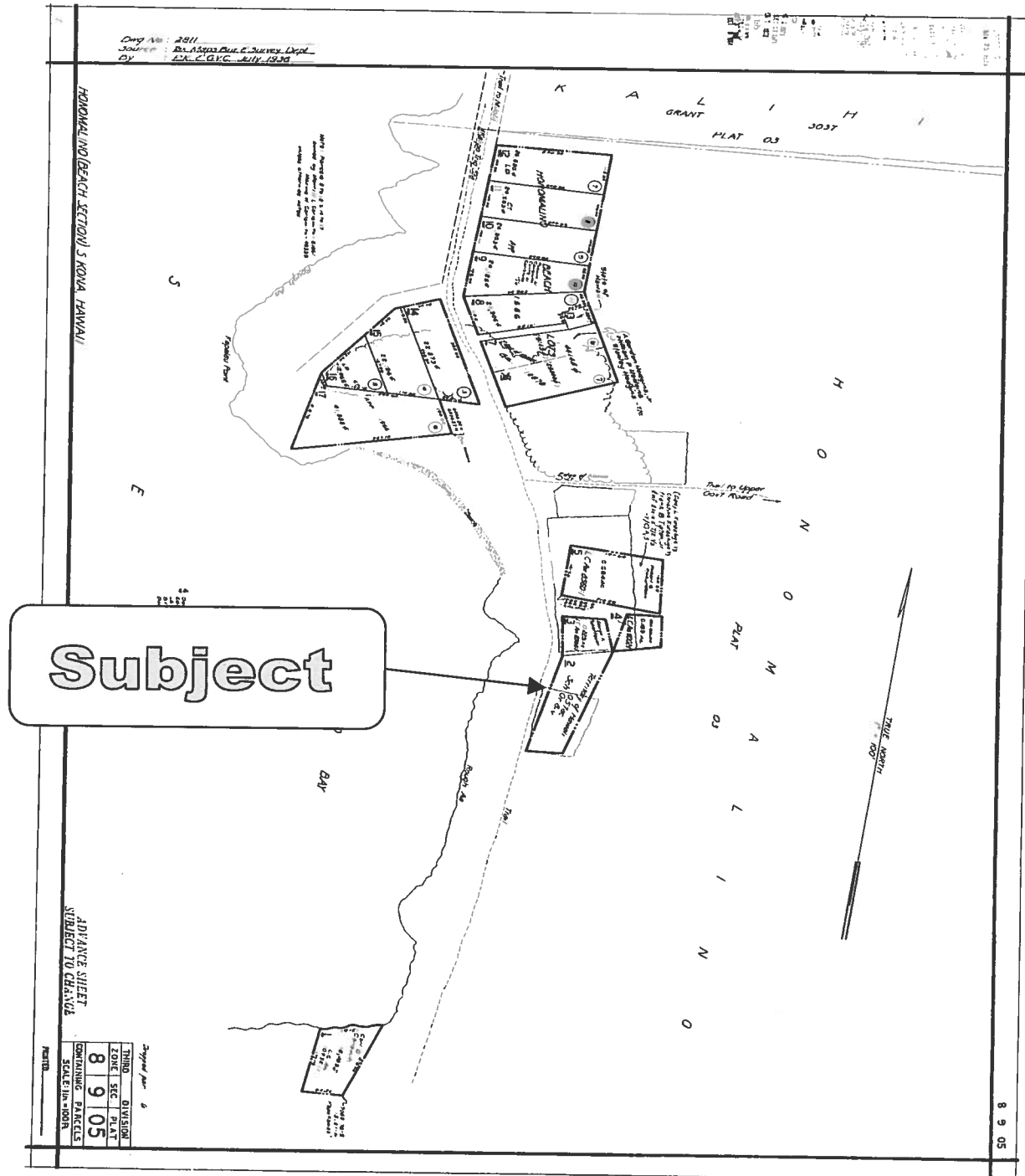


EXHIBIT B